

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

BERNARD JEMISON,)	
)	
Plaintiff)	
)	
vs.)	Case No. 4:09-CV-559-VEH-HGD
)	
MARY CARTER, et al.,)	
)	
Defendants)	

ORDER

The magistrate judge filed a report and recommendation on December 7, 2011, recommending that (1) plaintiff's claims against the defendants in their official capacities for monetary relief be dismissed with prejudice based on defendants' Eleventh Amendment immunity; (2) defendant Malone's motion for summary judgment as to plaintiff's Eighth Amendment excessive force claim and First Amendment retaliation claim be denied; (3) defendant Malone's motion for summary judgment as to plaintiff's Eighth Amendment excessive force claim and First Amendment retaliation claim on the basis of qualified immunity be denied; and (4) defendant Carter's motion for summary judgment as to plaintiff's Eighth Amendment excessive force claim and First Amendment retaliation claim be granted.

The parties were allowed fourteen (14) days in which to file written objections to the magistrate judge's report and recommendation. No objections have been filed by any party.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the court is of the opinion that the magistrate judge's report is due to be and hereby is **ADOPTED** and the magistrate judge's recommendation is **ACCEPTED**. Defendants' motion for summary judgment hereby is **GRANTED IN PART** and **DENIED IN PART**. Accordingly, it is **ORDERED** as follows:

1. Plaintiff's claims against the defendants in their official capacities for monetary relief are hereby **DISMISSED WITH PREJUDICE** based on defendants' Eleventh Amendment immunity.

2. Defendant Malone's motion for summary judgment as to plaintiff's Eighth Amendment excessive force claim and First Amendment retaliation claim is hereby **DENIED**.

3. Defendant Malone's motion for summary judgment as to plaintiff's Eighth Amendment excessive force claim and First Amendment retaliation claim on the basis of qualified immunity is hereby **DENIED**.

4. Defendant Carter's motion for summary judgment as to plaintiff's Eighth Amendment excessive force claim and First Amendment retaliation claim is hereby **GRANTED**.

Defendant Malone is hereby **ORDERED** to file an Answer to plaintiff's complaint within twenty (20) days of the entry date of this order.

DONE this the 6th day of March, 2012.

A handwritten signature in black ink, appearing to read "V. Emerson Hopkins", is written over a horizontal line.

VIRGINIA EMERSON HOPKINS

United States District Judge